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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DAVID T. SUMNER, IV ,

11 Plaintiff,

12 v.

13 UNITED STATES POSTAL
14 SERVICE, et al.,

15 Defendant.

CASE NO. 3:19-CV-6072-BHS

ORDER DISMISSING PLAINTIFF'S
COMPLAINT WITHOUT PREJUDICE,
GRANTING PLAINTIFF LEAVE TO
AMEND, AND RENOTING
PLAINTIFF'S MOTION TO PROCEED
IN FORMA PAUPERIS

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17 Plaintiff David T. Sumner, IV, proceeding *pro se*, filed this action alleging violations of
18 his constitutional rights. *See* Dkt. 1-1. The District Court has referred Plaintiff's pending
19 Application to Proceed *In Forma Pauperis* ("IFP") and Proposed Complaint to United States
20 Magistrate Judge David W. Christel pursuant to Amended General Order 02-19.

21 Having reviewed and screened Plaintiff's Proposed Complaint under 28 U.S.C. §
22 1915(e)(2), the Court finds Plaintiff has failed to state a claim. The Court dismisses Plaintiff's
23 Proposed Complaint without prejudice, re-notes the pending Application to Proceed IFP, and

24 ORDER DISMISSING PLAINTIFF'S COMPLAINT
WITHOUT PREJUDICE, GRANTING PLAINTIFF
LEAVE TO AMEND, AND RENOTING
PLAINTIFF'S MOTION TO PROCEED IN FORMA
PAUPERIS - 1

1 provides Plaintiff leave to file an amended pleading by January 17, 2020, to cure the deficiencies
2 identified herein.

3 **I. Background**

4 Plaintiff alleges that, on October 1, 2019, when he was in the main room of the
5 Longview, Washington post office, Defendant Glenn Blair, a postal employee, approached
6 Plaintiff and asked Plaintiff to leave the post office because he had been there for too long. Dkt.
7 1-1. Plaintiff states he removed a posted sign of the rules from the wall to read. *Id.* Defendant
8 Blair and another postal employee then called the police stating Plaintiff had vandalized the post
9 office by removing the sign. *Id.* Plaintiff alleges that, when two unnamed police officers arrived,
10 they did not allow Plaintiff to speak and falsely arrested Plaintiff on a malicious mischief charge.
11 *Id.* Plaintiff contends Defendants violated his Fourth and Fourteenth Amendment rights.

12 **II. Discussion**

13 The district court may permit indigent litigants to proceed IFP upon completion of a
14 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the “privilege of pleading *in*
15 *forma pauperis* . . . in civil actions for damages should be allowed only in exceptional
16 circumstances.” *Wilborn v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986). The Court has broad
17 discretion in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir.
18 1963), *cert. denied* 375 U.S. 845 (1963).

19 Notwithstanding IFP status, the Court must subject each civil action commenced pursuant
20 to 28 U.S.C. § 1915(a) to mandatory screening and order the *sua sponte* dismissal of any case
21 that is “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks
22 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B);
23 *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. §

1 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir.
2 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to *sua*
3 *sponte* dismiss an IFP complaint that fails to state a claim). An IFP complaint is frivolous if “it
4 ha[s] no arguable substance in law or fact.” *Tripati v. First Nat’l Bank & Trust*, 821 F.2d 1368,
5 1369 (9th Cir. 1987) (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *see also*
6 *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

7 A *pro se* plaintiff’s complaint is to be construed liberally, but like any other complaint it
8 must nevertheless contain factual assertions sufficient to support a facially plausible claim for
9 relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550
10 U.S. 544, 570 (2007)). A claim for relief is facially plausible when “the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable for the
12 misconduct alleged.” *Iqbal*, 556 U.S. at 678.

13 Unless it is clear a *pro se* plaintiff cannot cure the deficiencies of a complaint, the Court
14 will provide the *pro se* plaintiff with an opportunity to amend the complaint to state a plausible
15 claim. *See United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (“Dismissal
16 without leave to amend is improper unless it is clear, upon de novo review, that the complaint
17 could not be saved by any amendment.”).

18 Here, Plaintiff’s Proposed Complaint suffers from deficiencies requiring dismissal if not
19 corrected in an amended complaint. As stated above, the Court is required to liberally construe
20 *pro se* documents. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). However, Federal Rule of
21 Civil Procedure 8 requires a complaint to contain “a short and plain statement of the claim
22 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). “Each allegation must be
23 simple, concise, and direct.” Fed. R. Civ. P. 8(d).

1 In the Proposed Complaint, Plaintiff asserts his constitutional rights were violated when
2 he was: (1) denied due process; (2) discriminated against; and (3) illegally seized. Dkt. 1-1.
3 Plaintiff describes limited facts regarding a situation that occurred in the Longview, Washington
4 post office. Plaintiff does not explain how he was denied due process or discriminated against.
5 See Dkt. 1-1. Further, he does not allege facts sufficient to show he was illegally seized in
6 violation of the Fourth Amendment. See *id.* Plaintiff merely makes conclusory allegations that
7 the actions taken by Defendant Blair, an unnamed postal employee, and unnamed police officers
8 violated Plaintiff's constitutional rights.

9 In sum, Plaintiff has failed to provide clarity regarding the nature of his claims sufficient
10 to show how the alleged acts violated his rights. As such, Plaintiff has not stated a short and plain
11 statement of a claim showing he is entitled to relief. See *Iqbal*, 556 U.S. at 678 (2009) (a
12 pleading must be more than an "unadorned, the-defendant-unlawfully-harmed-me accusation");
13 see also *Twombly*, 550 U.S. at 545 (to state a claim for relief, "[f]actual allegations must be
14 enough to raise a right to relief above the speculative level").

15 The Court notes that to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must
16 show: (1) he suffered a violation of rights protected by the Constitution or created by federal
17 statute, and (2) the violation was proximately caused by a person acting under color of state law.
18 See *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). A complaint alleging constitutional
19 violations by federal officers in their individual capacity may be maintained under *Bivens v. Six*
20 *Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). "Actions under §
21 1983 and those under *Bivens* are identical save for the replacement of a state actor under § 1983
22 by a federal actor under *Bivens*." *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir.1991); see also
23 *Marks v. Gephardt*, 2007 WL 1795584, at *1 (W.D. Wash. June 19, 2007).

Due to the deficiencies described above, the Court finds Plaintiff has failed to state a claim. Therefore, the Court dismisses Plaintiff's Proposed Complaint without prejudice. If Plaintiff intends to pursue to this action, he must file an amended complaint on or before January 17, 2020. The amended complaint will act as a complete substitute for any previously filed complaint, and not as a supplement. The Court will screen the amended complaint to determine whether it contains factual allegations linking each defendant to the alleged violations of Plaintiff's rights. If Plaintiff fails to file an amended complaint or otherwise respond, the undersigned will recommend that the Application to Proceed IFP be denied and that the case be closed.

If Plaintiff submits an adequate complaint, the Court will consider the Application to Proceed IFP. The Clerk is directed to re-note the Application to Proceed IFP (Dkt. 1) for consideration on January 17, 2020.

Sto Christel

David W. Christel
United States Magistrate Judge